

UNITED STATES OF AMERICA

JUDICIAL CONFERENCE OF THE UNITED STATES

- - - - -x
 :
 Hearing on Proposed Amendment :
 to the Federal Rules :
 Appellate Rules. :
 :
 - - - - -x

Tuesday, January 25, 2005

Thurgood Marshall Federal
 Judiciary Building
 One Columbus Circle, N.E.
 Washington, D.C.

The hearing in the above-entitled matter
 convened, pursuant to notice, at 10:32 a.m.

BEFORE:

THE HONORABLE JOHN G. ROBERTS, JR.
 Judge, U.S. Court of Appeals

1 P R O C E E D I N G S

2 JUDGE ROBERTS: Let me call this hearing
3 of the Advisory Judicial Conference Advisory
4 Committee on the Federal Appellate Rules to order.
5 We're here today to hear testimony from Leroy
6 White, Esq., from Baton Rouge, Louisiana, who has
7 submitted--I see two letters to the committee dated
8 January 3rd and January 19th.

9 MR. WHITE: Yes, sir.

10 JUDGE ROBERTS: Mr. White, welcome to
11 Washington, and please proceed.

12 MR. WHITE: Thank you. Thank you, Your
13 Honor. I'm all choking up. I'm honored to be
14 here, and I thank the committee. I have a--I've
15 had some terrible encounters with other lawyers,
16 and I think the Supreme Court of the United States
17 is partly responsible. For one thing their past
18 decisions have allowed lawyers to advertise. That
19 was a terrible blunder as far as I'm concerned.

20 On my home state of Louisiana lawyers just
21 crowd the television channels with advertisements
22 about their practice. When I started practicing

1 law 50-some years ago, you weren't permitted to do
2 that, but now, all day long every day of the week,
3 some lawyer is on television promulgating their
4 practice. That's a terrible thing.

5 One lawyer in particular--I don't want to
6 call his name--but he'll get on television, and
7 he'll say, "I have recovered millions of dollars
8 for tort clients, automobile clients, accidents--involved in
9 accidents." And then he starts
10 changing it from saying he had recovered millions
11 of dollars. He started adding a little phrase in
12 there, "For thousands of clients." I don't think
13 he should do that. That's one thing.

14 The other thing is class actions. Class
15 actions, in my opinion, are one of the greatest
16 wrongs done by lawyers, and they emphasize the
17 conduct of judges. But it's the lawyers that are
18 the greatest criminals. I know two lawyers--one is
19 an ex-federal judge. His name is Judge Robert
20 Collins. He and I served as Adjunct Professors at
21 Southern University Law School at the same time.
22 When he was on the faculty with me he appeared to

1 be very arrogant. My wife was one of his students.
2 Then, lo and behold, he was charged with bribery
3 and other crimes. And I want to personally
4 congratulate the committee for taking part in that
5 and demanding that some action be taken against
6 him. And because of the Judicial Conference's
7 action, he was forced to resign, and that was a man
8 that I knew, personally. And, of course, he was a
9 federal judge.

10 And Senator "Huey" Russell B. Long vouched
11 for him when he was appointed to the bench, because
12 of delays taken in his confirmment by the United
13 States Senate. I learned later that senators were
14 taking bribes, United States senators, and "Huey"
15 Russell Long was involved in three that I know
16 about, two in Alabama and in--in Judge Collins.
17 And yet he was a-bid by a lot of people in
18 Louisiana, and we just can't continue to have
19 things like that. He finally died, and Judge
20 Collins was punished, which was right.

21 Now, the other lawyer I know from Florida.
22 His name is Mr. Gary. He owns a G4, for one thing.

1 Yeah. And I know him, personally, but I read in
2 some of this material I have here that he won a
3 big, big multimillion-dollar suit against Anheuser-Busch,
4 the beer company. Now, the Florida Bar is
5 investigating him. Misconduct. And he was a
6 invitee at Southern University Law School
7 commencements on two--past three occasions. Two I
8 know about, but he never talked about honor, the
9 honor of the profession, the honor of judges, and
10 the honor of lawyers. That's why we have to have
11 an emphasis made.

12 JUDGE ROBERTS: I noticed in your letters
13 that the one on January 3rd, you talked about the
14 electronic filing rules?

15 MR. WHITE: Yes, sir. Yes, I am. I'm
16 getting to that.

17 JUDGE ROBERTS: I wonder if we could have
18 your views on that.

19 MR. WHITE: Yes, sir.

20 JUDGE ROBERTS: All right.

21 MR. WHITE: The criticism that I have of
22 the electronic filing is that you have an opt out

1 clause in there. That's my major, major criticism,
2 and I was trying to save it for last, I'm sorry.

3 JUDGE ROBERTS: Well, I don't mean to get
4 you out of order, but I notice that the committee's
5 focus is on the Proposed Rules.

6 MR. WHITE: Yes. Yes, I understand. I
7 think that "are required" clause--that "opt out"
8 clause weakens the proposed amendment to
9 subparagraph A2a(D). That's my major, major
10 criticism, and the reason I say that is because I
11 call all the circuits, call all the judges--or the
12 clerks, rather--and only one has sent me a copy of
13 this requirement provision. That's the 11th
14 Circuit. And I started reading on it, and I said,
15 "Why is it we don't have other circuits requiring
16 electronic filing?" And so on that I traced that
17 back to the opt out clause. So long as they don't
18 have to do anything, I don't believe they will do
19 anything. And that's my attitude.

20 JUDGE ROBERTS: So you think they should
21 require the electronic--

22 MR. WHITE: Yes, sir, they should require

1 the electronic filing. Now, the reason I favor the
2 require is--require the electronic filing is
3 because if they don't require it, it will not be
4 done. I started to call the clerk again after she
5 was so kind to send me a copy of the rules, which I
6 attached to one of my--uh--but I decided maybe I
7 shouldn't do that, so I didn't do it. I wanted to
8 find out why the 11th Circuit had required
9 electronic filing over against paper filing. But
10 they've done it, so I said maybe I shouldn't take
11 it any further. But if you put the requirement in
12 there, there will be more openness.

13 And the other thing about it, I also had
14 some objections to having unpublished rulings.

15 JUDGE ROBERTS: Yes. I noticed that was
16 the subject of the rest of your letter. What are
17 your views on the No Citation Rules for the
18 unpublished opinions?

19 MR. WHITE: Yes, sir. Well, I think the
20 E-government Act of 2002 partially covers that.
21 Since all the courts have websites and all of them
22 are online, they aren't going to publish the

1 unpublished rulings, too. But before that I had an
2 objection. Now, my objection was as a lawyer, not
3 as an impartial observer. When those judges make
4 bad decisions they're just unpublished, 'cause I've
5 tried many cases and when they are weak, they don't
6 publish them. And some judges know their decisions
7 are weak or controversial, but they will not--would
8 not like the public to know exactly what happens in
9 a case.

10 I have had a case, Your Honor, where a
11 judge denied my motion for an appeal. It was just
12 almost impossible for me to believe that a judge
13 would do that. And my wife was a lawyer, and she
14 said, "Leroy, you better get onto that Judicial
15 Administration Committee in New Orleans and do
16 something about that." She said, "Your client
17 doesn't know what you're thinking." So I went down
18 there and I talked to the young administrator in
19 the Judicial Administrator's office. I talked to
20 the person who did the groundwork, and I went over
21 it with her very carefully.

22 I said as each state is interlocutory and

1 that I would not be entitled to an appeal until
2 after it was finished. I said, "I don't agree with
3 that."

4 And she said, "I don't either." She said,
5 "But we want you to write a letter to the judge,
6 just a letter to him, and tell him how you feel."

7 I said, "No, ma'am, I can't do that."

8 She said, "Well, why not?"

9 I said, "Because by that time my appeal
10 rights will have lapsed."

11 She said, "Oh, all right." She said, "You
12 write the letter and give it to me, and he better
13 hope that he did this because he was new."

14 I got my Writ of Mandamus to him in the
15 1st Circuit maintained by the court, and I saw one
16 of the judges in the "pollution (?) bureau," Judge
17 Sidewire. He said, "How you doin', Leroy?"

18 I said, "Pretty good, Your Honor." I
19 said, "I don't want to say what I'm going to say."

20 He said, "Well, say it anyway."

21 I said, "I was so goad that you wrote that
22 opinion in my favor."

1 He said, "It was payback time, Leroy."

2 I said, "Thank you." I carried my wife
3 down there with me, so I know about these things.

4 Now, but on the--back to the main topic
5 again, and one of these documents that I have on
6 rulemaking, all of them going to how the Judicial
7 Conference in September, federal rulemaking, goes
8 in some of these aspects of the problem without the
9 general public knowing it. And some of the people
10 that write on the topics are not really in good
11 faith either, 'cause they usually have an ax to
12 grind. That part I don't like. I would like to
13 have straightforward outside analysis, if possible.
14 But we don't have that.

15 So it's going to be up, and it's saying
16 here that you meet in September and in March, you
17 know, the times you meet, and I looked at
18 everything that was done in those rulemakings.
19 During that time, it had always been progressive
20 like I think it should be. But you have to have it
21 so that other people, strong people, impartial
22 people, want the same thing, and if you don't have

1 it like that, you're going to blunder along a long
2 time. That's the way I look at it.

3 And also, some of this effort has been
4 made back to 1993. That's a long time, and
5 something should have been done by then. The--of
6 course, some of the troubling aspect is that some
7 of the riders are not really in good faith, so we
8 have to consider everything that's relevant to the
9 problem. There is a book published in Louisiana.
10 It's "A Bad Bet on the Bayou." I had a client that
11 was disbarred, and he had me to represent him in a
12 tax matter, and on the way to the lawyer's office
13 that he was working with, he told me that the
14 lawyer was a crook. He said, "I'm a crook, and
15 he's a crook."

16 I said, "What do you want to tell me that
17 for? I don't want to know that. I want to know
18 about the tax case."

19 He said, "I never saw a lawyer that didn't
20 listen to what his client had to say."

21 I said, "All right." Now, he filed a big
22 class action suit against Shell Oil, the Norcork

1 Refinery case, and he also filed one, the Gentile
2 case. And what they would do, Your Honor, they
3 would get young law students to go on those
4 communities where one--the first one was an
5 explosion. The second was a fire, the Gentile
6 case, and they would hustle up clients and get them
7 to sign on the dotted line. The lawyer wasn't even
8 a participant in the litigation. He didn't file a
9 petition. The man that I represented filed a
10 petition before he was disbarred. The other lawyer
11 took over later.

12 And he wouldn't pay me. I charged him
13 \$1,000. He wouldn't pay me. He said I didn't want
14 to work on his case any more. But he had a lady
15 working for him in his office, and she said, "Oh,
16 you're Leroy White."

17 I said, "Yes."

18 She said, "When was the last time you saw
19 J.T.?"

20 I said, "Well, I'm not working for him
21 anymore."

22 She said, "He got murdered." Oh, yeah,

1 Your Honor. that's the way it goes.

2 I said, "He did?" She said yes. I said,
3 "Well, how do you know all about it?"

4 She said, "Because I worked for him. He
5 was a crook, and that lawyer he associates with is
6 a crook. You got to know about these things.

7 I said, "He was?" She said yes.

8 Then they had a railroad accident, and
9 both of them involved in it. She said, "When he
10 got disbarred, he became an associate pastor of a
11 church, (laughing) the Greatest Thing John Baptist
12 Church." As I indicated, my daddy's a Baptist
13 minister, so when he got--he got too troublesome,
14 somebody killed him. He was murdered. The police
15 department said they were trying to rob him. He
16 had a lot of luxury automobiles.

17 I said, "Gollee." So I to the police
18 department. Mr.--the man that had been the U.S.
19 Attorney that prosecuted Governor Edwards--private
20 U.S. attorney now. I went to his office. I talked
21 to Mrs. Stackhouse, who was this chief prosecutor.
22 He said, "You believe Sibley killed him." I didn't

1 answer that 'cause I don't know whether Sibley
2 killed that man or not, but I know they hired four
3 young black boys--that's what the police told me,
4 not the one that investigated the murder. But some
5 of the others came to me and told me, said, "Those
6 boys be on dope and the like, and they'll take
7 \$1,000 and go kill somebody if you want them
8 killed." Oh, yeah.

9 So they tried to help me. The deputy--the
10 detective that was on the case called me at home,
11 told me he wanted to tell me about the case, said
12 it happened the way he said it happened. I said,
13 "Well, I don't know that, I'm just going by what I
14 heard other people saying, what they would tell
15 me." So--but one of the emphasis in these articles
16 is that we need more openness. That's one of the
17 major emphases.

18 I agree with that, but it's contradicted
19 by another statement in there that the internet
20 would give us more openness, and everybody's
21 subject to openness because of the internet and
22 electronics. It doesn't appear to be the case

1 because I doubt whether people are going to
2 voluntarily admit that the parts they put in there.

3 The last thing, when i was teaching at
4 Southern Law School, there was a big collision on
5 the Mississippi River, Embree Bars Line. Right
6 after that big collision, the largest swoop-down on
7 that to get in there and get on the ground floor.
8 Some lawyers who became involved in that had been
9 my students at the law school, and one of them told
10 me, specifically--he was on the city council and he
11 later got to be a state senator--he said, "I'm
12 taking your class, Professor."

13 I said, "All right."

14 He said, "Don't I get an A,
15 automatically?"

16 I said, "Oh, no. You 'bout to get a F, or
17 thrown out, automatically." I don't want to call
18 his name. But he's a judge now. You see how it
19 figures?

20 JUDGE ROBERTS: He must have passed the
21 course, then.

22 MR. WHITE: (Laughing.) Well, all these

1 things, it does make you well up inside, and you
2 don't have anywhere to turn to, and then you see,
3 when you read through all this stuff from Tulane,
4 they do their best. You realize that sooner or
5 later something is going to have to break it open.

6 Another thing, I'm not a political person.
7 I don't really support politicians. I guess maybe
8 because I was an Internal Revenue Service officer
9 for over 21 years, and I got in the habit of not
10 participating in local politics, but I have to
11 applaud the President, President Bush, because of
12 his stand against medical malpractice litigation.

13 I represented another man, a doctor. His
14 wife had breast cancer, and he sued a doctor, Dr.
15 Abraham, and he--but he brought his wife's
16 succession to me. I said, "Well, I'll take your
17 wife's succession."

18 He said, "What are your doubts? Why do
19 you don't want to handle the malpractice suit
20 against Dr. Abraham?"

21 I said, "I tell you,"--and he was a
22 doctor--"I don't want to handle it because I'm not

1 in the business of making money, I'm just
2 practicing law 'cause I like justice. I believe in
3 justice."

4 He said, "Well, you're saying that I'm not
5 right."

6 I said, "I'm not saying that. I'm just
7 saying that I don't want to have that kind of
8 case."

9 And he told me, he said, "I agree with you
10 that my wife would have died anyway from that
11 breast cancer, but I think that if Dr. Abraham had
12 given her the right prognosis, she would have--could have
13 lived longer." He got \$500,000. Now,
14 that's why I agree with President Bush, because my
15 wife had cancer, too, still has it. She has colon
16 cancer, but there's no way I would sue her doctor
17 for her having that cancer.

18 All these things come together, but I
19 think that a prolonged investigation doesn't
20 enhance the immediate progress. I don't think it's
21 going to come, and that's my major reservation. I
22 you're going to let the lawyers get on television

1 and promote themselves, you're going to let class
2 action litigation continue--I don't know anything
3 about asbestos litigation, but I saw it in here,
4 too, asbestos, but I know about some of this other
5 litigation. I watch television, and I can see
6 lawyer promotion in there.

7 That's why I'm in here. I want you all to
8 do something, but I don't want it to be dragged
9 out. I want it to be done. And I don't want it to
10 be like it is now where a lawyer like me as to get
11 out and dig and find out what's been going on
12 behind it. I think that I applaud the committee
13 for articles like these on rulemaking.

14 I got another one in here, and I applaud
15 them for the way they go about it in a very
16 dignified honorable manner, but it has to be done
17 more aggressively. That's what I'm saying to you.

18 I'm sorry I gave you my little
19 introduction.

20 JUDGE ROBERTS: No, no. I appreciate that
21 very much. I just want to wrap up to make sure I
22 understand your position. We've already, on the

1 electronic filing, you think it should be required.

2 MR. WHITE: Yes, sir.

3 JUDGE ROBERTS: And on the citation of the
4 unpublished opinions, you think they should be
5 cited?

6 MR. WHITE: Yes, sir.

7 JUDGE ROBERTS: Okay. I just wanted to
8 make sure that we have them.

9 MR. WHITE: Those are my two points. And
10 I think that when people read that opt out
11 provision, I think they'll feel more comfortable.
12 We don't want them to feel more comfortable. We
13 want them--and not only that, we want them to be
14 punished, and a judge--another judge in New
15 Orleans--I think it was Ruckmeyer (ph) or Miller,
16 or something like that and--he's off the bench now.
17 But you see, as I perceive it, if you can take the
18 blame away from the lawyers who are the real
19 wrongdoers, the lawyers, away from them and put it
20 on the judges, you're leaving out major
21 contributors to the criminal actions. I don't want
22 that either. I think the lawyers should be

1 punished.

2 The last, final thing that I would like to
3 see is a limitation on contributions to lawyers'
4 political campaign. Now, I have a client--I had a
5 lawyer friend, a client who gave a judge \$50,000
6 for his campaign, and I went to him and talked to
7 him, 'cause he and I were good friends. His name
8 was Mr. Kaiser, Roland Kaiser. He and I were very
9 good friends. I said, "Mr. Kaiser, you're a rich
10 lawyer. You got a big law firm. Why would you
11 give him \$50,000 to run?" He did for two judges.
12 And I said, "Why would you give it to those
13 fellows?"

14 And he said, "I think they're the best man
15 to be judges." Now, I can't say that that is
16 wrong, but I'm saying that I wouldn't do it. And
17 the big law firms and one of these articles that I
18 presented to the conference, one of these articles
19 they seemed to indicate that the big ones that take
20 part in this program, they don't say anything about
21 the average work-day lawyer taking part. The only
22 people that they make--it's not a strong promotion

1 by the big firms, but they indicate in here that
2 big firms have the machinery to work in the
3 electronic area.

4 And I saw that Hiber Chase case versus
5 Microsoft case here.

6 JUDGE ROBERTS: Mm-hmm.

7 MR. WHITE: And I saw Harris Trust and
8 Savings & Loan versus Morgan Stanley in here. I
9 read all that stuff. Those cases might seem to
10 point the way to what's going to happen in the
11 future, but I don't think it's good enough to say
12 it will ultimately happen. I think you should make
13 it happen. You can't sit around waiting for it to
14 happen, you got to force it to happen; otherwise,
15 the legal profession will deteriorate even more.

16 JUDGE ROBERTS: Well, thank you very much,
17 Mr. White, for those--

18 MR. WHITE: Yes, sir.

19 JUDGE ROBERTS: --thank you very much for
20 those thoughts and your views on the matters before
21 the committee based on your experience. We really
22 appreciate your coming to Washington for it, and I

1 think, if there are just any other comments before
2 you wrap up, we'd be happy to hear them.

3 MR. WHITE: Yes, but there's one other
4 thing I--and again I got carried away and I didn't
5 mention, too, I had on my list to discuss, just one
6 other little thing. One of these articles states
7 something that I have stated as one of my key
8 things, and that is legislative action. I
9 mentioned it. One of these articles says the same
10 thing.

11 JUDGE ROBERTS: Mm-hmm.

12 MR. WHITE: It says, "Legislative action
13 is necessary." And I have an appointment scheduled
14 with Congressman Baker tomorrow at 2 o'clock where
15 I'm going to tell him what I think they should be
16 doing.

17 JUDGE ROBERTS: Mm-hmm.

18 MR. WHITE: If the ultimate requirement is
19 legislative action, they should take it. And I
20 even went through a history of these laws, the
21 committee, the judicial conference in 2001, and you
22 had act on it proud of that. 1999, and then the E-2

1 Government Act of 2002, and your present work.
2 That's actually worrying me. I'm not trying to
3 cast any reflection on that work, but what I'm
4 trying to say: Is it good enough? That's the
5 question I'm asking. And I hope that's a
6 legitimate question.

7 JUDGE ROBERTS: Well, it certainly is a
8 legitimate question, and we'll work very hard to
9 make sure that it is good enough.

10 MR. WHITE: Sir?

11 JUDGE ROBERTS: We'll work very hard to
12 make sure that it is good enough.

13 MR. WHITE: Oh, yes.

14 JUDGE ROBERTS: And then I appreciate your
15 coming here today and giving the testimony, and I
16 appreciate your submissions to the committee before
17 coming here, and I'd like to thank you for
18 testifying before us today.

19 MR. WHITE: Oh, that's great. Thank you,
20 Your Honor.

21 JUDGE ROBERTS: Thanks very much, Mr.
22 White.

1 MR. WHITE: Yes, sir. At times a lawyer
2 "explodes."
3 (Whereupon, at 11:05 a.m. the hearing was
4 concluded.)